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SIPDIS

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TAGS: [PGOV](#) [PREL](#) [TU](#)

SUBJECT: [TURKEY](#): UPHILL TREK ON JUDICIAL REFORM

REF: ANKARA 972

Classified By: POL Counselor Daniel O'Grady, for reasons 1.4(b,d)

11. (C) Summary: Judicial reform lies at the center of a growing Turkish debate over its EU accession path, as well as its internal political power struggles. The EU mandates that to open chapter 23 (on the judiciary and fundamental legal rights), Turkey must overhaul its judicial system. The Ministry of Justice readily acknowledges Turkey's need to bolster the independence of the courts, reduce the lengthy backlog of cases, and improve prison conditions. Ankara has declared that it hopes to begin its judicial reform by September 2009 and to complete the task by 2013. Still, while the GOT has made an admirable start by drafting the comprehensive Judicial Reform Strategy Report, it has not yet demonstrated the necessary resolve to implement these fundamental changes. End summary.

12. (C) The Turkish judicial system includes the Constitutional Court, Council of State, Supreme Court, Court of Jurisdictional Disputes and a general system of courts of first instance as well as State Security Courts and Military Courts. The Constitutional Court is the highest legal body for constitutional review, and consists of 11 members and four substitute members, all of whom are appointed by the Turkish President. The 15 members include 10 judges, one academic and four senior administrative officers and lawyers. The 10 judges are members of the following Turkish supreme courts. The High Court of Appeals (two CC judges out of eleven total on the penal side, and 21 on the civil law side) is the last instance for reviewing rulings and judgments provided by justice courts, criminal courts, and the examination courts. The Council of State (which includes two CC members) is the highest administrative court in Turkey. The Military High Court of Appeals (which includes one CC member) is the court of final instance for all rulings related to the military. The High Military Administrative Court (including one CC member) has jurisdiction over military personnel in administrative cases or active military service. The Court of Accounts (including one CC member) audits all accounts related to revenues, expenditures and government property financed by general and subsidiary budgets.

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Acquis Chapter 23  
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13. (C) Reform of Turkey's judicial system is the core to fulfilling the benchmarks laid out in [acquis](#) chapter 23,

"Judicial and Fundamental Rights." This includes elements such as ensuring impartiality of judges and their loyalty to the state, shortening lengthy trials, addressing appalling prison conditions, adjusting the hierarchical structure of the courts, and eliminating the backlog of cases. The EU has also highlighted the need to strengthen impartiality, independence and efficiency of the judiciary as a key component in the implementation of political reforms.

14. (C) European Commission (EC) political officer Didem Bulutar Elusoy told us that Turkey has made partial progress towards judicial reform in hopes of opening chapter 23. For instance, the GOT created a justice Academy for the training of judges and prosecutors. The Ministry of Justice and the Justice Academy continue to provide extensive training on the new penal code, prevention of torture, freedom of expression, foreign languages, and EU and Human Rights law. In 2006, 501 judges and prosecutors created an association called the Union of Judges and Prosecutors (YARSAV). YARSAV's main objectives are to bolster judicial independence, impartiality and security of tenure. The EU has applauded this step.

15. (C) The most challenging issue facing the Turkish judiciary is its weak independence. The High Council of Judges and Prosecutors (HCJP) is composed of members of the Court of Cassation (Court of Appeals), Council of State and Court of Dispute Settlement. The HCJP has direct control over the judiciary and is in charge of the appointment, transfer, promotion and disciplinary procedures of all civil, criminal and administrative judges and public prosecutors. The EU Commission has highlighted the absence of lower court

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representation in the HCJP. It is also not transparent. Critics contend the HCJP lacks democratic legitimacy and does not have a procedure for objection against decisions of the High Council. Members from both the EC and the Ministry of Justice have told us that it is essential for the HCJP to be restructured for other judiciary reforms to take place.

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Case Backlog; Lengthy Trials  
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16. (C) The EC has also noted the backlog of cases and lengthy trial periods as examples of judicial inefficiencies. Processing both major and minor cases takes approximately three to four years, resulting in a slow and inefficient judiciary. The EC has repeatedly recommended the establishment of a Court of Appeals, which could deal with the annual average of 500,000 cases it claims are currently addressed by the Supreme Court. According to EC officials, a Court of Appeals would also increase the efficiency and speed of the judiciary, while helping to ensure a fair trial.

17. (C) The EC maintains that Turkey must also address prison conditions in the context of judicial reform. Turkish prisons suffer from underfunding, overcrowding and insufficient staff training. Most prisons do not have an adequate number of doctors, and psychologists are only available in some of the largest prisons. In 2007, the Ministry of Justice issued a regulation that restricted the ability of parliamentary members to visit inmates who were convicted of terrorism or violations against the constitution and state. (NOTE: Government sources claim that they adopted the regulation to prevent possible attempts by the pro-Kurdish Democratic Society Party (DTP) deputies to visit PKK leader Abdullah Ocalan. END NOTE)

18. (C) Justice Ministry EU Affairs officials Ali Bilen and Hasan Soylemezoglu recently shared with us a draft of the Judicial Reform Strategy, which highlights 10 areas of reform in the judiciary. The document primarily focuses on the need for the judiciary to strengthen its independence, increase its professionalism, enhance its efficiency, improve the penitentiary system and continue legislative work for EU

harmonization. MOJ officials stressed that the Judicial Reform Strategy is only a "roadmap." They said the reform process is set to start in September 2009 and be completed by 2013.

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Comment  
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19. (C) Turkey's Judicial Reform Strategy document addresses many of the flaws in the judiciary system, but lacks clarity on implementation. The MOJ has demonstrated its intentions to increase impartiality, independence, professionalism and effectiveness, but their recommendations on how to implement these dramatic changes appears somewhat unrealistic given Turkey's historic tendency to move cautiously on reform. In addition, judicial reform remains highly controversial in Turkey, especially for hardline-secular Kemalists who fear such changes would increase Islamist legal influence in what is often viewed as a strong secularist institution -- the courts. Opposition parties are unlikely to make it easy for the administration to make quick progress, out of concern that the ruling Justice and Development Party (AKP) would stack the courts with its sympathizers. These views simply underscore that the court system is widely viewed as so politicized that few Turks have confidence in its integrity.

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